

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7617 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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ANDARAM DEVAJI CHAUDHARI

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

MR DP JOSHI AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/11/1999

ORAL JUDGEMENT

#. Heard the learned advocate Ms. Subhadra G. Patel for the petitioner and Mr. D.P.Joshi, AGP for the respondents. The detention order dated 19.12.98 passed by respondent no.2 - Commissioner of Police, Ahmedabad city in exercise of power conferred under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) is challenged in the present proceeding under article 226 of Constitution of India.

#. The grounds of detention supplied to the petitioner under section 9(1) of PASA, copy of which is produced at Annexure : B inter alia indicate that two criminal cases vide CR Nos. 106/98 and 107/98 are registered against the petitioner at Vatva Police Station on 22.10.98 and 25.10.98 respectively. That the first case is registered for the offences made punishable under sections 324 read with section 114 of I.P.C., under section 135(1) of Bombay Police Act and also under the Atrocities Act. The second case filed against the petitioner is in respect to the offences made punishable under sections 143, 147, 148, 149, 307 of I.P.C. read with section 135(1) of Bombay Police Act and Atrocities Act. Over and above that, two witnesses on assurance of anonymity have supplied information regarding the incidents dated 12.10.98 and 15.10.98 in respect to anti-social activity of the petitioner.

#. In consideration of the material placed before the detaining authority, respondent no.2 has come to conclusion that the petitioner is a "dangerous person" within the meaning of section 2 (c) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his anti-social activity which prejudicially affects the maintenance of public order, the detention order is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. It has been contended at bar on behalf of the petitioner that the petitioner having got himself released in the cases registered against him has continued his anti-social activity and hence the detention order is necessary. That the detaining authority has failed to consider the less drastic remedy like cancellation of bail before passing the impugned order and as such, the order is rendered invalid.

#. In the matter of Zubedabibi vs. State of Gujarat, reported vide 1995(2) GLR, 1134, Division Bench of this Court has expressed a view that non consideration of less drastic remedy like cancellation of bail available under section 437(5) of Cr.P.C. discloses non application of mind on the part of the detaining authority vitiating the subjective satisfaction and rendering the detention order invalid. That the said view has been approved and endorsed in L.P.A. No. 1056/99 decided on 15.9.99 by this Court (Coram: C.K.Thakkar & A.L.Dave, JJ).

#. In the instant case, on scrutiny of the grounds of

detention, it appears that respondent no.2 as detaining authority has failed to consider the availability of less drastic remedy like cancellation of bail under section 437(5) of Cr.P.C. which has vitiated the subjective satisfaction rendering the impugned order invalid.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 19.12.98 passed by respondent no.2 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Andaram Devaji Chaudhri is ordered to be set at liberty, if not required in any other case. Rule to that extent is made absolute.

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